

REMARKS

A. BACKGROUND

The present Amendment is in response to the Office Action mailed January 19, 2010. Claims 26, 27, 29-32, and 35-46 were pending and rejected in view of cited art.¹ Claim 38 is canceled and claims 26, 35, 39, and 41 are amended. Claims 26-27, 29-32, 35-37, and 39-46 are now pending in view of the above amendments, with claims 26, 35, and 41 being independent.

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicant requests that the Examiner carefully review any references discussed below to ensure that Applicant's understanding and discussion of the references, if any, are consistent with the Examiner's understanding.

B. CLAIM OBJECTIONS

The Office Action objected to claims 39 and 41 because of certain informalities. By this amendment, claim 39 has been amended to update its dependency, while independent claim 41 has been amended to include a period. In view of the above, Applicant respectfully requests withdrawal of the objections.

C. PRIOR ART REJECTIONS

I. REJECTION UNDER 35 U.S.C. §§102(B) AND 103(A)

The Office Action rejected claims 26, 27, 29, 30, 35, 36, 38-43, 45, and 46 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,569,200 (*Umeno*). The Office Action also rejected claims 31, 32, 37, and 44 under 35 U.S.C. § 103(a) as being unpatentable over *Umeno*. Because *Umeno* does not teach or suggest each and every element of the rejected claims, Applicants respectfully submit that the independent claims as presented for

¹ Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should the need arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

reconsideration are not anticipated nor made obvious by *Umeno*.² In particular, the *Umeno* teaches a vascular catheter having "a catheter body 2 and a hub 11 attached to the proximal end 8 of the catheter body 2" (col. 2, ll. 63-64). "By . . . gently tapering the outside surface of the distal end portion of the main portion 6 and tip portion 7 toward the distal end along the axis and moreover decreasing the wall thickness of these portions" provides certain advantages (col. 4, ll. 24-27). For instance, "the rigidity of the catheter body 2 smoothly decreases to the distal end, and hence kinks at the boundary between the tip portion 7 and the main portion 6 (boundary between the single-tube and double-tube structure portions) can be prevented with higher reliability" (col. 4, ll. 31-35)(emphasis added). This kink prevention is provided, at least in part, by the inclusion of the slit portion, such as slit portion 31, with associated slit. For instance, "the pitch of the slit 22e becomes gradually smaller toward the distal end. By thus forming the slit 22e, the flexibility of the outer tube 22 increases gradually toward the distal end, and kinks at the aforementioned boundary can be prevented with higher reliability" (col. 7, ll. 51-56)(emphasis added).

In direct contrast, the independent claims 26, 35, and 41 recite, in part, "the flexibility of the catheter shaft adjacent the balloon being lesser than the flexibility of the catheter shaft at the bending section." Because *Umeno* teaches that the "the flexibility of the outer tube 22 increases gradually toward the distal end" and that the "rigidity of the catheter body 2 smoothly decreases to the distal end", *Umeno* teaches away from increased rigidity or less flexibility "adjacent the balloon" at the distal end of the catheter. *Umeno*, therefore, teaches opposite to the inventions claimed in independent claims 26, 35, and 41.

Accordingly, for at least the reasons noted, independent claims 26, 35, and 41 and the claims depending therefrom³ are neither anticipated nor made obvious by *Umeno*, and thus reconsideration and withdrawal of the rejection under Sections 102 and 103 is respectfully requested.

² Any amendments to claims other than those which are expressly relied upon in overcoming the rejections on art have been made simply to insure consistency in claim language, to correct typographical or grammatical errors, or to correct other errors of a formal, non-substantive nature, but not to otherwise narrow the claims in scope for any reason.

³ Emphasis herein of the differences between the independent claims and the prior art are equally applicable to the dependent claims, but this does not mean, on the other hand, that these are necessarily the only differences between the claimed invention and the prior art of record. Applicants thus do not acquiesce in any asserted rejections of the dependent claims.

D. CONCLUSION

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as provide the required motivation or suggestion to combine references with the other art of record.

For at least the foregoing reasons, Applicant respectfully submits that the pending claims are neither anticipated by nor made obvious by the art of record. In the event that the Examiner finds any remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 19th day of April, 2010.

Respectfully submitted,

/Paul N. Taylor, Reg.# 57271/

Paul N. Taylor

Registration No. 57,271

Attorney for Applicant

Customer No. 57360

Telephone No. 801.533.9800

FDR:kdj
2737167_1.DOC